

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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PHYLIS TANZ,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO. 08-cv-01462- LAK
	:	
- against-	:	
	:	
EUGENE KASAKOVE, MARKAS FINANCIAL SERVICES, INC.,	:	
	:	
Defendants.	:	

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**DECLARATION OF RICHARD M. MORTNER  
IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

RICHARD M. MORTNER, declare as follows:

1. I am an attorney admitted to the practice of law in the State of New York and before the United States District Court for the Southern District of New York. I represent the Plaintiff, Phylis Tanz, in the above-captioned matter. I am fully familiar with the underlying facts and circumstances and I make this Declaration in opposition to Defendant's Motion to Dismiss the Complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

2. Annexed as exhibits hereto, and described below, is the Seconded Amended Complaint, which is the subject of defendants' motion and six documents that Plaintiff relied upon in framing the Complaint. It is respectfully requested that the Court consider these documents in connection with the instant 12(b)(6) motion, in accordance with *Cortec Indus., Inc. v. Sum Holding L.P.*, 949 F.2d 42, 47-48 (2d Cir.1991), cert. denied, 503 U.S. 960, 112 S.Ct. 1561 (1992).

3. On December 6, 1996, one month after the death of Plaintiff's husband; Mrs. Tanz signed a power of attorney prepared by defendant Kasakove, which accorded defendant Kasakove broad powers over every aspect of Mrs. Tanz's financial life (the "Power of Attorney"). The Power of Attorney executed by Mrs. Tanz in favor defendant Kasakove is annexed as Exhibit B

4. The Power of Attorney is specifically referred to in the Complaint at ¶19. Plaintiff respectfully requests that the Court consider this document in connection with the instant 12(b)(6) motion.

5. Defendant Kasakove offered to Mrs. Tanz to invest in his company in a letter, dated July 14, 2001. Allegations regarding this investment which are contained in the Complaint were framed based upon this offering letter.

6. The offering letter is annexed hereto as Exhibit C. Plaintiff respectfully requests that the Court consider this document in connection with the instant 12(b)(6) motion.

7. On or about February 12, 2004, defendant Kasakove sent a letter to Peter Strauss, Esq., in which he stated that plaintiff's investment in his company was a loan.

8. Defendant Kasakove's letter of February 12, 2004 is annexed hereto as Exhibit D. The letter was relied on in framing the Complaint, in particular, that portion of the Complaint which seeks disgorgement of proceeds from the sale of defendant Kasakove's company. Plaintiff respectfully requests that the Court consider this document in connection with the instant 12(b)(6) motion.

9. The ongoing fiduciary relationship between defendant Kasakove and Mrs. Tanz, subsequent to her 2001 investment in defendant's company is evidenced in a letter from defendant Kasakove to Mrs. Tanz, dated July 10, 2003.

10. Defendant Kasakove's letter of July 10, 2003 is annexed hereto as Exhibit E. The letter was relied on in framing the Complaint, in particular, that portion of the Complaint which invokes the doctrine of equitable estoppel. Plaintiff respectfully requests that the Court consider this document in connection with the instant 12(b)(6) motion.

11. A worksheet for a budget created by Mrs. Tanz in December 2006, containing handwritten comments by defendant Kasakove, such as "Take \$5,000 from IRA to pay bills," and "Cut down - to 1 TV." Is annexed hereto as Exhibit F. This document evidences that the fiduciary relationship between the parties continued until 2006.

12. This document was relied on in framing the Complaint, in particular, that portion of the Complaint which invokes the doctrine of equitable estoppel. Plaintiff respectfully requests that the Court consider this document in connection with the instant 12(b)(6) motion.

13. The Complaint alleges Plaintiff suffers from mental and physical disorders as a result of the mental pain and anguish caused by Defendant Kasakove's conduct. These injuries form the basis of Plaintiff's claim for intentional infliction of emotional distress.

14. In framing the allegations of intentional infliction of emotional distress at ¶¶71-77 of the Complaint, Plaintiff relied in part upon Phylis Tanz's medical history with her treating psychiatrist, Dr. Andrew S. Dalsimer, M.D. The medical records documenting that history are annexed hereto as Exhibit G. Plaintiff respectfully requests that the Court consider these records in connection with the instant 12(b)(6) motion.

15. I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed in New York, NY, on June 16, 2008.

\_\_\_\_\_  
/s/  
Richard M. Mortner

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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PHYLIS TANZ,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO. 08-cv-01462-LAK
	:	
v.	:	JURY TRIAL DEMANDED
EUGENE KASAKOVE and	:	
MARKAS FINANCIAL SERVICES, INC.,	:	
	:	
Defendants.	:	
	:	

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**CIVIL ACTION: SECOND AMENDED COMPLAINT**

Plaintiff Phylis Tanz, by her attorney Richard M. Mortner, Esq., for her complaint against defendants respectfully alleges as follows:

**NATURE OF THE ACTION**

1. Plaintiff, a widow, aged 73 years, alleges breach of fiduciary duty against her former attorney-in-fact, financial advisor and accountant Defendant Eugene Kasakove and his company Markas Financial Services Inc. Plaintiff alleges that defendant Kasakove's actions, individually and through Markas Financial Services Inc., was malicious, oppressive and fraudulent, and plaintiff seeks lost investment income, disgorgement, punitive damages and attorneys' fees in excess of the statutory jurisdictional amount. Plaintiff also seeks damages for intentional infliction of emotional distress in excess of the statutory jurisdictional amount.

**VENUE AND JURISDICTION**

2. Subject matter jurisdiction exists based on 28 U.S.C. §1332, because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and because the controversy is between citizens of different states.

3. Personal jurisdiction over the defendants also is proper based on New York Civil Practice Law and Rules § 302, and Rule 4 of the Federal Rules of Civil Procedure, subparagraphs (e) and (h).

4. Personal jurisdiction and venue in this action are predicated on 28 U.S.C. § 1391(a), since a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of New York.

**THE PARTIES**

5. Plaintiff, Phylis Tanz, is a citizen of the State of New York. She resides at 715 Park Avenue, New York, NY 10021

6. Upon information and belief, defendant Eugene Kasakove is a citizen of the State of New Jersey, and resides at 167 Stephens Park Road, Hackettstown, NJ 07840.

7. Upon information and belief, defendant Markas Financial Services, Inc. (“MFS”) is incorporated in the State of New Jersey, with its principal place of business at 167 Stephens Park Road, Hackettstown, NJ 07840.

8. Upon information and belief, defendant Kasakove is the president of MFS.

9. Upon information and belief, defendant MFS, at all material times herein, was acting on its own behalf and as an agent for Defendant Kasakove. All acts and omissions by

MFS alleged herein are imputable to Defendant Kasakove by virtue of the aforesaid agency relationship.

### **FACTUAL BACKGROUND**

10. Plaintiff, Mrs. Tanz, married Norman Tanz in 1989. On November 3, 1996, after battling cancer for two years, Mr. Tanz died.

11. Mrs. Tanz was a dedicated wife, mother and homemaker. Mrs. Tanz's life as a housewife did not equip her with the financial sophistication she needed following the death of her husband. However, she was acutely aware that she needed to use the utmost caution in handling her limited assets.

12. During her husband's illness and in the difficult period that followed, Mrs. Tanz found that she could not keep up with the medical and household bills.

13. Thus, in the period just prior to Norman Tanz's death, Defendant Kasakove, who had been Mrs. Tanz's accountant since 1995, began coming to Mrs. Tanz's home and helping Mrs. Tanz organize her bills.

14. Following the passing of her husband Mrs. Tanz was under enormous stress. In addition to grieving over her loss, she was sick with Bell's palsy, type-2 diabetes, and high blood pressure. In addition, her son suffered a heart attack and had to undergo open heart surgery, Mrs. Tanz's daughter became ill with multiple sclerosis, and lastly, her step-children were contesting her late-husband's will.

15. During this difficult period, Defendant Kasakove visited Mrs. Tanz in her home and offered to take over the management of Mrs. Tanz's financial matters. He told Mrs.

Tanz he was not only an accountant, but that he also provided expert services as a stockbroker and financial manager through his company, defendant MFS.

16. As an elderly woman, Mrs. Tanz firmly believed that the best thing to do was to invest her money very safely and live off of the interest. She had enough for her needs and she wanted the emotional security of knowing that her money was prudently managed.

17. Mrs. Tanz told Defendant Kasakove she needed to feel safe and secure; she was very conservative and wanted to live off of her income, not her principal.

18. Defendant Kasakove agreed with this concept.

19. On December 6, 1996, one month after Norman Tanz died; Mrs. Tanz signed a power of attorney prepared by defendant Kasakove, which accorded defendant Kasakove broad powers over every aspect of Mrs. Tanz's financial life (the "Power of Attorney").

20. Defendant Kasakove billed Mrs. Tanz for his service by sending invoices in the name of his company, defendant Markas Financial Services, Inc.

21. After obtaining Mrs. Tanz's Power of Attorney, defendant Kasakove persuaded Mrs. Tanz to move her nest egg of approximately \$493,767 from her broker for the prior 17 years to a new broker who was a friend of defendant Kasakove, Donn Kerr. In this way defendant Kasakove cut Mrs. Tanz off from the last of her advisors and protectors.

22. Eventually, plaintiff invested another \$31, 000, making the total amount of her funds placed under defendants' control \$525,767.

23. Mrs. Tanz owned no property or tangible assets of any significant value. Thus, defendant Kasakove exercised control over virtually all of plaintiff's assets.

24. Mrs. Tanz lodged complete trust in defendant Kasakove. Defendant Kasakove supervised every aspect of Mrs. Tanz's financial life, including the payment of her bills. In addition, as Mrs. Tanz's attorney-in-fact, defendant Kasakove assisted Mrs. Tanz in working with her lawyers to resolve her dispute with her late husband's children and to close the estate.

25. Mrs. Tanz so relied upon defendant Kasakove that before she would spend any money she would ask Defendant Kasakove whether she could afford the proposed expense.

26. Immediately upon taking control of Mrs. Tanz's financial life, defendant Kasakove began providing Mrs. Tanz falsely inflated reports regarding the performance of her portfolio under defendants' management. Defendant Kasakove consistently advised Mrs. Tanz that she "had plenty of money."

27. Time and again, defendant Kasakove assured Mrs. Tanz that she was a wealthy woman, assured her that she could afford the expenses she was considering and encouraged her to change her frugal lifestyle.

28. Thus, Mrs. Tanz began to spend money on a lifestyle she had never known before.

29. Defendant Kasakove advised Mrs. Tanz that these expenditures were being paid from her investment income.

30. Thus, defendant Kasakove approved, and indeed encouraged, Mrs. Tanz to incur expenses on luxury items such as the following:

- a. Extended stays in Florida at the Boca Raton Hotel, Renaissance Hotel, Holiday Inn Hotel;
- b. A cruise on the Radisson through the Panama Canal and to Costa Rica;
- c. Membership at The Friars Club; and

d. Membership at the Town Club.

31. Defendant Kasakove misled Mrs. Tanz into falsely believing that, as a result of defendants' management of her portfolio and financial affairs, she had become substantially wealthier than when she had appointed Defendant Kasakove her attorney-in-fact, and that she was living on the investment income defendants had earned for her through management of her assets.

32. However, the reality of Mrs. Tanz's financial health was quite different than the rosy picture represented by defendant Kasakove. In fact, during the period 1997 to 2001, as a result of defendant Kasakove's financial management, misleading and false reports and financial recommendations, Plaintiff had unknowingly spent most of her principal.

33. In 2001, defendant Kasakove took advantage of Mrs. Tanz's trust and confidence by asking Mrs. Tanz to transfer \$100,000 to a privately held trucking company controlled by Defendant Kasakove, which she agreed to do.

34. Following Plaintiff's \$100,000 investment in defendant's trucking company in 2001 until 2006, defendant Kasakove repeatedly assured plaintiff that she should not worry about her finances, and that he would continue to provide her with adequate income from her investment in his company.

35. However, in December 2006, defendant Kasakove advised plaintiff that he would no longer provide her with income from her investment in his trucking company because he claimed to have sold the business.

36. Thus, in December 2006, plaintiff realized that defendant's assurances and promises of ongoing income for her support were intended to lull her into failing to commence an action against defendant for the mismanagement of her finances.

37. Moreover, notwithstanding the fact that Mrs. Tanz was an investor in the trucking company, Defendant Kasakove only returned to Plaintiff her initial investment, but paid Plaintiff no share of the proceeds of the alleged sale of the trucking company.

38.

### **EQUITABLE ESTOPPEL**

39. As a result of defendant Kasakove's promise to continue to provide plaintiff with adequate income, defendant Kasakove lulled plaintiff into believing that it was not necessary for her to seek the advice of counsel or commence litigation pertaining to defendants' improper representations and mismanagement of her funds.

40. Defendant Kasakove misrepresented to plaintiff that (i) under his financial management she would spend only her investment income; (ii) that in the period 1997 to 2001 plaintiff had plenty of money for the expenses she was incurring; and (iii) from 2001 to 2006, defendant Kasakove fraudulently represented to plaintiff that defendant would provide plaintiff with ongoing income on which to live.

41. Based on Mrs. Tanz's lack of financial knowledge and the personal hardships she was enduring, coupled with the fact that defendant Kasakove had taken upon himself the role of her fiduciary, Mrs. Tanz justifiably relied on Defendant Kasakove's decisions and recommendations and believed defendant Kasakove's misrepresentations. As a result, plaintiff and was lulled into a false sense of security by Defendant Kasakove.

42. Plaintiff, in reasonable reliance on defendant Kasakove's assurances, delayed in bringing this suit until now.

43. Defendant Kasakove, as plaintiff's fiduciary, wrongly induced plaintiff to invest in his own company, and fraudulently represented to plaintiff that he would provide her with income on which to live, in order to lull plaintiff so that she would refrain from commencing legal action against defendant Kasakove for his breaches of his fiduciary duty.

44. Thus, defendant's conduct caused the plaintiff to delay the bringing of this lawsuit.

45. Based on the foregoing, in the event that defendants assert the limitations defense, defendants may be estopped from taking advantage of defendant Kasakove's own wrongful conduct by the application of the doctrine of equitable estoppel.

**COUNT I  
(Breach of Fiduciary Duty)**

46. Plaintiff repeats and realleges each of the allegations asserted in paragraphs 1 through 45 of this complaint as though fully stated herein.

47. Mrs. Tanz reposed trust and confidence in Defendant Kasakove, and Defendant Kasakove took advantage of Mrs. Tanz's trust and lack of sophistication.

48. In addition, Defendant Kasakove assumed a position of strength in relation to Mrs. Tanz by holding himself out as an expert in money managing.

49. Defendant Kasakove imprudently advised Mrs. Tanz that she depart from her frugal lifestyle and incur expenses she had not previously incurred at any time in her life.

50. Defendant Kasakove failed to advise Mrs. Tanz that the spending he recommended she undertake was actually being paid for out of her principal.

51. As a result Mrs. Tanz without her knowledge depleted her financial resources, thereby depriving herself of adequate principal to generate the investment income she had planned to live on as an elderly widow.

52. Thus, defendant Kasakove made fraudulent misstatements of fact to Mrs. Tanz and fraudulently concealed pertinent information, to wit, that the extravagant personal expenses he advised her to incur were being paid for out of her original principal.

53. Defendant Kasakove, as Mrs. Tanz's attorney-in-fact, owed a duty to her to disclose any information that was relevant to the affairs entrusted to him. Specifically, Defendant Kasakove owed a duty to Mrs. Tanz to manage her accounts in the conservative manner that she had requested, to properly advise her, to disclose all pertinent information and avoid all self-dealing.

54. Defendant Kasakove's duty was heightened in the instant case due to the fact that Defendant Kasakove had vastly superior knowledge to Mrs. Tanz.

55. Defendant Kasakove, as Mrs. Tanz's attorney-in-fact, breached his duty to satisfy the high standard of loyalty to which all fiduciaries are bound, including the duty that all disclosures be complete and unequivocal.

56. Defendant Kasakove breached his fiduciary duty by failing to disclose the true state of Mrs. Tanz's investment portfolio.

57. Defendant Kasakove, as Mrs. Tanz's attorney-in-fact, breached his fiduciary duty by failing to advise his client of facts material to her investment decisions, *i.e.*, he failed to advise Mrs. Tanz that the spending that he was recommending she undertake was being paid out of her principal – not her investment income, as she believed.

58. Defendant Kasakove breached his duty to act with regard to Mrs. Tanz's financial matters, which had been entrusted to him, with the same degree of prudence and diligence as prudent individuals of discretion and intelligence employ in their own like affairs.

59. Defendant Kasakove breached his fiduciary duty of prudence by advising Mrs. Tanz that she depart from her frugal lifestyle and incur expenses that depleted her principal.

60. Defendant Kasakove breached his duty, as Mrs. Tanz's attorney-in-fact, to act in the utmost good faith and undivided loyalty toward his principal, Mrs. Tanz, and to act in accordance with the highest principles of morality, fidelity, loyalty and fair dealing.

61. Similarly, defendant Kasakove breached his duty, as Mrs. Tanz's attorney-in-fact, to utilize the Power of Attorney he had been given for the benefit of his principal, to achieve what is in Mrs. Tanz's best interest.

62. Defendant Kasakove breached his duty of loyalty and his duty to act for the benefit of his principal's best interest by misleading Mrs. Tanz into believing as a result of Defendant's management of her finances, she had plenty of money and had doubled her principal, and that any losses that occurred subsequently were due to market forces – not spending and mismanagement.

63. Upon information and belief, defendant Kasakove did this so that Mrs. Tanz would provide \$100,000 for defendant Kasakove's trucking company.

64. In other words, defendant Kasakove misled Mrs. Tanz regarding the state of her finances under his management in order to cause her to make her funds available for his personal needs.

65. Accordingly, as Mrs. Tanz's attorney-in-fact , Defendant Kasakove breached his fiduciary duties (i) to make all disclosures complete and unequivocal, (ii) to advise

his client of facts material to her investment decisions, (iii) to act with regard to Mrs. Tanz's financial matters, which had been entrusted to him, with the same degree of prudence and diligence as prudent individuals of discretion and intelligence employ in their own like affairs, (iv) to act with the utmost loyalty and (v) to act in his principal's best interest.

66. Based on the foregoing, defendant Kasakove was responsible for the depleting of plaintiff's financial resources and thus depriving her of adequate investment income on which to live out her senior years.

67. As a result, Plaintiff is entitled to receive damages resulting from her loss of investment income.

68. Based on the foregoing, defendant Kasakove has exhibited a very high degree of moral culpability. Therefore, defendant Kasakove's breach of his fiduciary duties gives rise to liability even in the absence of damages, and plaintiff is entitled to receive punitive damages.

69. Defendant Kasakove is also required to disgorge any ill-gotten gain arising from the investment of \$100,000 of Mrs. Tanz's funds in defendant Kasakove's trucking company, even if Plaintiff sustained no direct economic loss.

**COUNT II  
AGAINST DEFENDANT KASAKOVE  
(Intentional Infliction of Emotional Distress)**

70. Plaintiff repeats and realleges each of the allegations asserted in paragraphs 1 through 69 of this complaint as though fully stated herein.

71. In 2003, plaintiff began to ask questions to defendant Kasakove regarding his management of her finances and began to ask for assurances that she would not lose the \$100,000 she had invested in Defendant Kasakove's for his trucking company.

72. In response to plaintiff's efforts to regain control of her financial life and to rest that control from defendant Kasakove, defendant Kasakove began a campaign of intimidation against plaintiff.

73. From 2003 to 2006 defendant Kasakove terrified Mrs. Tanz with demonstrations of fierce anger over her inquiries into the true state of her finances and her \$100,000 investment.

74. As a result of defendant Kasakove's deliberate campaign of intimidation, defendant inflicted severe mental pain and anguish on Mrs. Tanz.

75. Because of the control defendant Kasakove maintained over plaintiff and the intimidation that defendant applied to plaintiff, plaintiff began to suffer from anxiety related disorders. These disorders, including insomnia and depression, were magnified by Plaintiff's shocking loss of her financial security.

76. Plaintiff saw a doctor and the doctor prescribed medications for plaintiff and recommended further treatment.

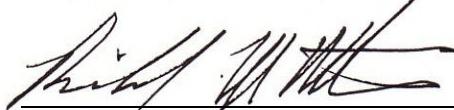
77. As a result of the said conduct of defendant, plaintiff was made sick, nervous, depressed, unable to sleep, and unable to properly eat and digest her food; plaintiff was compelled to obtain medical aid in an endeavor to restore her health and incurred medical bills; and plaintiff still suffers from the same psychological and physical injuries.

WHEREFORE, plaintiff respectfully requests the following relief:

- (i) On Count I, against Defendants Eugene Kasakove and Markas Financial Services, Inc for Breach of Fiduciary Duty, special damages according to proof at the time of trial, general damages according to proof at the time of trial, disgorgement of ill-gotten gains and punitive damages according to proof at time of trial;
- (ii) On Count II, against Defendant Eugene Kasakove for Intentional Infliction Of Emotional Distress, special damages according to proof at the time of trial, general damages according to proof at the time of trial, and punitive damages according to proof at time of trial; and
- (iii) Such other relief the Court may deem reasonable and interest and costs of the action.

Dated: March 17, 2008  
New York, New York

Respectfully submitted,



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Richard M. Mortner (RM-0019)  
40 Broad Street, 5th Floor  
New York, NY 10004  
Tel. 212-480-2181

Attorney for Plaintiff Phylis Tanz

## Power of Attorney

**Notice:** This is an important document. Before signing this document, you should know these important facts. The purpose of this power of attorney is to give the person whom you designate (your "Agent") broad powers to handle your property, which may include powers to pledge, sell, or otherwise dispose of any real or personal property without advance notice to you or approval by you. You may specify that these powers will exist even after you become disabled, incapacitated, or incompetent. The powers that you give your Agent are explained more fully in New York General Obligations Law, Article 5, Title 15, Sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned. This document does not authorize anyone to make medical or other health care decisions for you. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

**Know Everyone by These Presents,** which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:

That I

PHYLLIS ROSOV TANZ  
(insert name and address of the principal)

do hereby appoint:

EUGENE L. KASAKOVE 167 STEPHENS PARK HACKETTSTOWN N.J.  
(If 1 person is to be appointed agent, insert the name and address of the agent above)

(If 2 or more persons are to be appointed agents with each agent to be able to act ALONE without requiring the consent of any other agent appointed in order to act, insert the name and address above of each agent SEPARATELY appointed and BE SURE TO insert the word "OR" between EACH designation of an agent to show that EACH agent has COMPLETE power to act alone)

(If 2 or more persons are to be appointed agents to act TOGETHER and requiring the JOINT consent of ALL appointed agents to act with no one agent to be able to act alone, insert the names and addresses above of all agents JOINTLY appointed and BE SURE TO insert the word "AND" between EVERY designation of each agent to indicate that ALL agents listed are required to act together and NONE can act alone)

### MY ATTORNEY(S)-IN-FACT TO ACT

(If more than one agent is designated and the principal wants each agent alone to be able to exercise the power conferred, insert in this blank the word "SEPARATELY")

(If more than one agent is designated and the principal wants all of the designated agents together to exercise the power conferred, insert in this blank the word "JOINTLY")

(The failure to make any insertion in this blank will require the agents to act either separately or jointly, in accordance with the principal's use of the word "OR" or the other word "AND" between every respective designation of such agents above. If the principal's wishes cannot be determined because he or she fails to insert the word "OR", "AND", "SEPARATELY", or "JOINTLY" as he or she is asked to do above, the principal will be deemed to require the agents designated above to act jointly.)

IN MY NAME, PLACE AND STEAD in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

**Initial in the opposite box any one or more of the subdivisions as to which the principal WANTS to give the agent authority.**

**(NOTICE: The principal must write his or her initials in the corresponding blank space of a box below with respect to each of the subdivisions (A) through (N) below for which the principal WANTS to give the agent(s) authority. If the blank space within a box for any particular subdivision is NOT initialed, NO AUTHORITY WILL BE GRANTED for matters that are included in that subdivision)**

- |  |  |
|--|--|
| (A) real estate transactions; ..... [P.R.T.]   | (I) personal relationships and affairs; ..... [P.R.T.]   |
| (B) chattel and goods transactions; ..... [P.R.T.]   | (J) benefits from military service; ..... [P.R.T.]   |
| (C) bond, share and commodity transactions; [P.R.T.]   | (K) records, reports and statements; ..... [P.R.T.]  |
| (D) banking transactions; ..... [P.R.T.]   | (L) full and unqualified authority to my attorney (s)-in-fact to delegate any or all of the foregoing powers |
| (E) business operating transactions; ..... [P.R.T.]  | to any person or persons whom my attorney (s)-in-fact shall select; ..... [P.R.T.]                           |
| (F) insurance transactions; ..... [P.R.T.]   |  |
| (G) estate transactions; ..... [P.R.T.]  |  |
| (H) claims and litigation; ..... [P.R.T.]  | (M) all other matters; ..... [P.R.T.]  |
| (N) if the blank space in the box to the right is initialed by the principal, this power of attorney shall not be affected by the subsequent disability or incompetence of the principal; ..... [P.R.T.] |  |

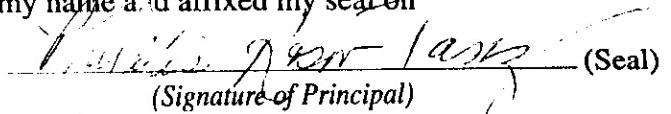
*(Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.)*

To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation or termination shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

In Witness Whereof, I have hereunto signed my name and affixed my seal on

December 6

19 96

  
(Signature of Principal)

Editor's note: If the principal wishes to grant the agent the power to make gifts, language authorizing such gifts should be added, including, if desired, specific limitations as to the amounts or the recipients of the gifts or a direction that the gifts be made only pursuant to a past pattern begun by the principal.

## ACKNOWLEDGEMENTS

STATE OF NEW YORK

COUNTY OF NEW YORK

ss.:

On DECEMBER 6, 1996 before me personally came PHYLLIS R. TANZ to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and she acknowledged to me that she executed the same.

CHARLES W. LEWIS  
Notary Public, State of New York  
No. 01LE7533430  
Qualified in Kings County  
Commission Expires Sept. 30, 1998

STATE OF

COUNTY OF

ss.:

On 19 before me personally came to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

## AFFIDAVIT THAT POWER OF ATTORNEY IS IN FULL FORCE

(Sign before a notary public)

STATE OF

COUNTY OF

ss.:

being duly sworn, deposes and says:

1. The Principal within did, in writing, appoint me as the Principal's true and lawful ATTORNEY(S)-IN-FACT in the within Power of Attorney.
2. I have no actual knowledge or actual notice of revocation or termination of the Power of Attorney by death or otherwise, or knowledge of any facts indicating the same. I further represent that the Principal is alive, has not revoked or repudiated the Power of Attorney and the Power of Attorney still is in full force and effect.
3. I make this affidavit for the purpose of inducing

to accept delivery of the following Instrument(s), as executed by me in my capacity as the ATTORNEY(S)-IN-FACT, with full knowledge that this affidavit will be relied upon in accepting the execution and delivery of the Instrument(s) and in paying good and valuable consideration therefor:

Sworn to before me on

PHYLLIS ROsov TANZ  
715 PARK AVENUE APT 10D  
NEW YORK, NEW YORK 10021

TO

EUGENE L. KASAKOVE  
167 STEPHENS PARK  
HACKETTSTOWN, NJ 07840

# Power of Attorney

Statutory Short Form

Dated, December 4, 1996

**THE MARKAS GROUP**

167 STEPHENS PARK ROAD

HACKETTSTOWN, NJ 07840

TEL: (908) 850-3820 FAX: (908) 850-9455

July 14, 2001

Mrs. Phyllis R. Tanz  
715 Park Avenue Apt 10D  
New York City, NJ 10021-5047

Dear Phyllis:

In further reference to our conversation of the other day, I will briefly outline both the risk and the reward of the project. Should you decide to come on-board, this letter and my signature thereon, will also serve to Guarantee your investment, as to principal. I cannot guarantee the income on your investment, but I believe that my estimates are on the low side.

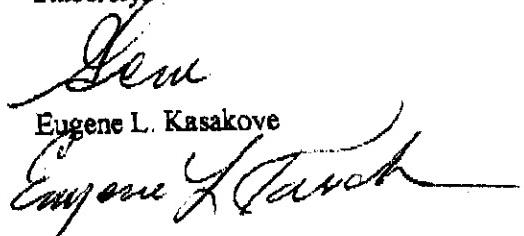
Here is how it works:

1. In the first week which will probably be the week starting July 27<sup>th</sup> or August 3rd at the latest, we should start billing the customers at about \$60,000.00 to \$75,000.00 per week.
2. It could take eight (8) weeks for us to start receiving payments from the companies we have billed.
3. At eight weeks (+- 60 days) it will take \$500,000.00 to \$600,000.00 to finance the receivables
4. For this reason I have taken in three (3) partners, with you being one. I will finance the balance over \$300,000.
5. For the first sixty (60) days there will be no payments made to the (now) four investors.
6. A deduction is made from each invoice in the amount of four (4%) percent. Thus for each \$100,000.00 invested, a deduction of \$4,000.00 is made. If we are only paid every sixty days (and I believe that some payments will come in thirty (30) to forty-five (45) days) the return on investment (ROI) will be 24% before margin interest. This assumes a "turn" of six times per year. I believe we should come closer to 30% due to all invoices not taking 60 days to be paid.
7. After that time, the money should roll in since the full amount will be invested. Payments to investors will be made monthly starting the third month after the first receivable is established. Within 60 days after the first payment is made I hope to go to a semi-monthly payment schedule. Unless otherwise requested, payments will be made directly to your brokerage account.
8. The bottom line is that after sixty days, we should receive payments more or less weekly.

I will not need all the funds at once. I would like a weekly contribution of \$25,000 from each investor, starting with my initial call, which as I said should be about the 3<sup>rd</sup> of August. If you are in agreement, I will send you four (4) Authorizations for Smith Barney to wire to the above named account, the appropriate funds.

If you have any questions, please contact me as soon as possible. If you do not wish to proceed, please advise me at your earliest as other investors are standing by.

Sincerely,



Eugene L. Kasakove



MARKAS FINANCIAL SERVICES, INC.

167 STEPHENS PARK ROAD

HACKETTSTOWN, NEW JERSEY 07840-5518

TEL (908) 850-3820 FAX (908) 850-9455

E-MAIL: MARKASF@WORLDNET.ATT.NET

February 12, 2004

Peter J. Strauss  
Epstein Becker & Green, P.C.  
250 Park Avenue  
New York, NY 10177-1211

RE: Phyllis R. Tanz r: The Markas Group

Dear Mr. Strauss:

Mrs. Tanz "invested" (WITH) as a loan \$100,000.00 (paid by her in four installments in 2001) (Investment) in The Markas Group (as noted in my acknowledgement and yours), a division of MARKAS FINANCIAL SERVICES, INC. She has no equity, but has my personal guarantee as to her principal. All this is clearly stated in the letters referred to by you and clearly stated to Mrs. Tanz numerous times. A 1099 interest was supplied for each year and filed with the IRS.

She has received in 2001: \$ 2,976.70 (One quarterly payment on Nov 10<sup>th</sup> 2001)

She has received in 2002: \$ 20,284.36

She has received in 2003: \$ 15,091.76

Total \$ 38,352.82

In 2004 she has received \$ 4,662.08 after a withdrawal of \$5,000.00 in principal by Mrs. Tanz. Her current principal Loan balance is \$ 95,000.00.

Mrs. Tanz has expressed her comfort level with me and you are in possession of all pertinent documents. I fail to understand what it is that you do not understand. I also believe you were retained to prepare a will wherein she would protect her daughter from creditors and loss of "Medicare" or similar benefits.

1. It is not an equity investment
2. Its is a loan (guaranteed by Markas and me individually)
3. You are in possession of all documents related to her loan.

If you have any further questions, I am available by any means shown above

Sincerely,

Eugene L. Kasakove

President

ELK/es

Cc: Mrs. Tanz ✓

SSB Transmittal Ltr



## MARKAS FINANCIAL SERVICES, INC.

107 STEPHENS PARK ROAD  
 HACKENSACK, NEW JERSEY 07640-5518  
 TEL (908) 860-3820 FAX (908) 860-9455  
 E-MAIL MARKASH@WORLDNET.ATT.NET

July 10, 2003

Mrs. Phyllis Rosov Tanz  
 715 Park Avenue, APT 10D  
 New York City, NY 10021-5047

Dear Phyllis:

As you may be aware, I am rapidly approaching the years of three score and ten (70 to most of you) and I have planned for this time by substantially reducing my client list. Due to the number of clients I have let go, I can no longer maintain my SEC Registration and thus need individual approval from all clients **for each account** over which I am to exercise control. As one of the selected clients to be maintained, I am enclosing the appropriate forms (**One of which for each account must be signed in the presence of a notary**) for each account as well as a self addressed USPS mail envelope. It is imperative that you attend to this as quickly as possible as I cannot function with Smith Barney without it. If you have any questions please feel free to call me. If you chose **not** to continue with me for whatever reason please **mail back to me** your acceptance (by signing the appropriate documents if you continue) or not signing them but by returning your information to MARKAS FINANCIAL SERVICES, INC. "e" mail is not acceptable.

Happily, my mind and body are still functioning well and health is not the reason for this action.

Thank you for choosing me as well as MARKAS FINANCIAL SERVICES, INC. as your source for financial management.

Sincerely,

  
 Eugene L. Kasakove  
 President  
 ELK/es  
 Encls.

~~Debt as of 6/16/08~~

~~Debt as of 6/16/08~~

~~Debt as of 6/16/08~~ 162, 000.

Dept (Credit card)

Citizen  
Check

13, 000. -

14, 785. 10

~~6, 652. 00~~

~~3, 500. 00~~

3500

To be paid monthly

Con Edison

Rent

Carrie

Poland Sq.

AT&T

Insurance

Cell phone

Drug Store (Clyde)

Chase Bank

Health Coverage

Am. Exp. 41st

Gasoline

Utilities

1557. 75

~~300. 00~~

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**CONFIDENTIAL****Triple i/CliniForms  
PATIENT REGISTRATION**

Name Phyllis Tany SS# 112 32 0738 A  
 Street Address 715 Park Ave 10-D Date of birth 4/3/34 Marital status: S M W Sep D  
 City 10021 State NY  
 Telephone: Home 628-5436 Office   
 Referred by Dr. Sean Kaplan, (787-7524)  
 Spouse's name 275-CPW Zip 744-5050  
 Spouse's employer / address Pharm - 288-6966 ✓  
 Emergency contact \_\_\_\_\_ Tel# \_\_\_\_\_ Relationship \_\_\_\_\_

**PATIENT EMPLOYER INFORMATION**

Employer name \_\_\_\_\_ Tel# \_\_\_\_\_  
 Employer street address \_\_\_\_\_ City / State \_\_\_\_\_ Zip \_\_\_\_\_  
 Patients occupation \_\_\_\_\_

**INSURED PERSON (IF NOT PATIENT)**

Name \_\_\_\_\_ Tel# \_\_\_\_\_  
 Street Address \_\_\_\_\_ City / State \_\_\_\_\_ Zip \_\_\_\_\_  
 Relationship to patient \_\_\_\_\_

**INSURANCE**

Medicaid # (if applicable) \_\_\_\_\_ Medicare # (if applicable) \_\_\_\_\_  
 Primary Insurance Company Name \_\_\_\_\_  
 ID # \_\_\_\_\_ Group # \_\_\_\_\_ Tel. # \_\_\_\_\_  
 Secondary Insurance Company Name \_\_\_\_\_  
 ID # \_\_\_\_\_ Group # \_\_\_\_\_ Tel. # \_\_\_\_\_

**INFORMATION AND ASSIGNMENT OF BENEFITS**

I authorize the release of any medical information necessary to process this claim. I permit a copy of this authorization to be used in place of the original.

Date 4/16/03 Signature Phyllis Tany

I hereby authorize Dr. \_\_\_\_\_ to apply for benefits on my behalf for covered services rendered by him/her, or by his/her order. I request that payment from my insurance company be made directly to Dr. \_\_\_\_\_ (or to the party who accepts assignment).

I certify that the information I have reported with regard to my insurance coverage is correct.

I permit a copy of this authorization to be used in place of the original. This authorization may be revoked by either me or my insurance company at any time in writing.

Date 4/16/03 Signature Phyllis Tany  
 (Patient, parent, or guardian)

Name \_\_\_\_\_

Triple i/CliniForms

@1999

PAT011

1-800-367-6798



The clean that won't cause skin reactions

## PROGRESS NOTES

NAME \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_ PG# \_\_\_\_\_  
 DATE - TIME HT \_\_\_\_\_ BMI \_\_\_\_\_ BP \_\_\_\_\_ P \_\_\_\_\_ T \_\_\_\_\_ ALLERGIES  
 CPT CODE WT \_\_\_\_\_

Formedic

4/16/02 In Re Sharon Kaplan - question "Clinical depression"  
 but isn't sure - can't see how pull will help a situation  
 that is real -

~~Diabetes 50mg Glucophage exercise helps, good stren~~

~~COP~~  
Past -

husband died 6 y. ago - trouble sleeping, has lost 5 cl  
 friends

Son 49 - 2 heart surgeries - diabetes

daughter 42 - recent dx w/ MS

husband - (2nd husband) died in her <sup>1st</sup> husband -

Good marriage - 7 years - prostate Ca - fearful  
 therapy has helped - had many legal problems after his death  
 has lost most of her money - causes anxiety - & loneliness  
 has good social skills - spent life as couple  
 Was married at age 17 - her education was life - is artistic  
 interior design, flower designs -

Therapist - says it's the way she perceives things  
 depression - fear of money - can't trust - doesn't talk to sis -  
 tightness in shoulders - worries -

questioning where does she fit -

Lipitor

500 mg, Solgar adv. anti dx - Centrum Silver, Caltrate

½ Maxide -

daughter - described as man who had muscle dysfunction -

Sees her unhappiness - got her down -

"Sharon says" when down - staying home, fearful  
 comes & goes - no suicidal thoughts -

Grew up W. side N.Y. -

~~Does feel good when doing something she likes, is appreciated~~

~~COP~~ has happy disposition -

thoughts -

~~CONFIDENTIAL~~



citalopram HBr  
Well-tolerated SSRI therapy

A favor expression

Please see full prescribing information in separate accompanying booklet.

FOREST PHARMACEUTICALS, INC.  
Pain Relievers. The Answer. The Pain.

E01

DATE - TIME	HT	BMI	BP	P	T	ALLERGIES
CPT CODE	WT					

Formedic

as a drug taker -  
hysterectomy - age 41 fibroids -  
She sees Dr. Kaufman 3x -

Therapy helped t. boutiques - deep boutiques -

~~COP~~ COPD - sleeps more tearful, wakes and 4<sup>th</sup>  
can only go to sleep with TV on, feels surrounded by memories  
no authority - feels unloved

able to discuss more sx of depression

Tril Zoloft 50mg t qpm #30 (start 1/2 tab)

5/21 - sleeps better, less anxious but still feels flat  
may feel slightly less fearful -

↑ Zoloft 50mg 1 1/2 q HS #45 x 3

also takes Centrum Silver, anti-oxidants, Ca<sup>++</sup>, C + E.

6/8 - feeling better, sleeps better - some t word retrieval  
better, able to deal w/ issues of the day

less sad, not crying - craving to eat is less -  
has clearly improved, better able to focus & get things done -

Continue Zoloft @ 75mg/day 100mg -

7/18 - feels low grade dysphoria - but tackling things is well  
is lonely but needs space, nose or where

9/10/03 - feeling much better after 2 wks on gingeng -  
- Nutribin has helped w/ weight loss - more social -  
sleeping better - appetite fine. tends to more for soy to saty

Continue meds as is

~~COP~~ COPD - feeling sad, hopeless or something - feeling overwhelmed  
continues to get out & exercise, or weight loss program

many tasks to do include changes to her will b/c of daughter's MS -

↑ Zoloft - 50mg t/t qpm #40 x 3 - start 125mg/day

11/24 - down, not crying, blames daughter (48) - who she notes has M.Dystrophy  
daughter developed MS - 1 mo ago daughter mailed other & said she hate her -  
will be alone for Thanksgiving - daughter having affair w/ German -

↑ has remained Zoloft 125 -

↑ Zoloft 150mg

1/3/04 - ns



**Celox**  
citalopram HBr  
Well-tolerated SSRI therapy

A favorable expression

Please see full prescribing information in separate accompanying booklet.

**FOREST PHARMACEUTICALS, INC.**  
Pharmaceuticals • Biologics • Managed Care • Specialty Care

6/01

PRINTED IN CANADA

PSYCHIATRY		OFFICE VISITS		FORMEDIC	
NAME	ADDRESS	INSURANCE #	PHONES (H)	S M W T	F
OCCUPATION		DATE OF BIRTH		AGE	
MEDICATIONS		REFERRED BY			
DRUG ALLERGIES					
DATE	HISTORY & PHYSICAL				
<p>1/22 Wellbutrin 100 mg SR 1/2 AM #30 x3  <b>COPD</b> Zoloft 100 mg 1/2 PM #30 x3  3/21/06 - had been feel tension &amp; would get confused while out  but is gone - memory is good has financial pressure  mood low &amp; sad, tearful, lack of joy  sleep mostly ok &amp; has gain weight  using Zoloft 125 mg  Wellbutrin 100 mg SR 1/2 AM  Dep. recurrent depression  Plan ↑ Zoloft to 150 mg  Zoloft 100 mg #60 x3  Wellbutrin 100 mg SR 1/2 AM #60 x3</p> <p>Lipitor 20 mg + Zyprexa 10 mg  Glucophage 500 mg BID  Diazepam 80 mg  Diuretic -</p> <p>5/15  6/21 - pc daughter in hoag, she has hip prob.  but feels is healthy &amp; issues - is more forgetful  &amp; gets overtired at home after taking wellbutrin  reduce Wellbutrin to 100 mg 1/2 AM  or Zoloft to 125 mg  6/26 - feels calmer, less anxious, daughter is out of  <b>COPD</b> hospital - but now considered to have M.S. or Bipolar  is sleeping fine  8/20 Zoloft 100 mg 1/2 AM #60 x3 using 125  12/22 - money issues - money was mishandled by advisor  loss money causes great deal anxiety &amp; stress -  mood low &amp; weepy, sleep ok, effort to talk 2 people  &amp; enjoyment  Wellbutrin 100 mg SR + AM  Zoloft 125 mg 1/2  Glucophage 1000 mg BID  Diazepam 160  Lipitor 20, Zyprexa 10 mg  Actos 15</p>					

Hypnotic activity there when you need it  
not when you don't

**RESTORIT (temazepam) C**

DATE - TIME	HT	BMI	BP	P	T	ALLERGIES
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Formedic

1/18/07 Increased Zoloft 150mg qHS or 25mg in afternoon has helped w/anxieties & has improved sleep - 5/25 days later - accident in shower, burns, in jags - just released from hosp.

continuing financial problems, issue of mismanagement doesn't feel any pleasure -

COPD

Continue exercise

has lost some weight on diet

Sleep erratic -

Effexor 37.5mg

Glucophage -

Actos -

Diavane -

Leptin / Zydia

↑ Zoloft add 25mg in afternoon

Zoloft 100mg TID #60x3

(Wellbutrin 100mg TID AM #30x3 (comp 1))

7/11 - feeling much better - feels meds have helped

&amp; found lawyer to take her case.

use Zoloft 150mg qPM; 25mg in daytime if need

Wellbutrin 100mg qAM

10/10 - concerned if Wellbutrin makes her sleepy - but currently it isn't

11/2 late still waiting for lawyer to file case in Fed. Court

started Yoga - feeling alright. Watched diet &amp; exercise

1/29 Wellbutrin 100mg SR TID AM #60x3 (comp 1)

3/21/08 Sertraline 100mg TID #60x3

COPD

PACIFIC



**A POWERFUL SSRI  
that's well tolerated**

©Forest Pharmaceuticals, Inc.

Lexapro® (escitalopram oxalate) tablets

**Lexapro**  
escitalopram oxalate

POWER TO ENJOY LIFE



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AUGUST 2005

LITHO IN CANADA